

MEMORIAL

OF THE

PRISONERS for DEBT.

IT is certainly a mistaken Notion of the Generality of Mankind, that the ~~Ser-~~^{Severity} ~~vility~~ of the present Laws against Debtors, is a Security to their Creditors of their Property; and that a softening of the Rigour of those Laws, would be an Injury to the Subjects, and destructive of mutual Faith and Credit.—The Contrary will as certainly appear when it is considered:

1st. That any Merchant or Tradesman, when through Misfortunes or Indiscretions, or even the necessary Expences of maintaining and bringing up a Family (which will too naturally exceed the Profits of a small Trade) finds himself in insolvent Circumstances, he seldom, through Fear, Pride, or Shame, or all three combined, will disclose his disagreeable Situation to his Creditors, till he is either denied Credit, or sees the Storm of his Creditors inevitable and at his Door, or finds himself arrested, by some more vigilant Creditors, and held to Bail.—This Scene opens the Door of the Debtor's Circumstances, and if he cannot satisfy his urgent Creditors Demands, he generally meets the whole of his Creditors, and endeavours after an Accommodation, by offering them a Composition; and it is always remarked by People conversant in Business, that this is the best Offer in the Debtor's Power; and, if not accepted of, the Creditors seldom or never find themselves so well satisfied by any other Method. But here there is a Plaintiff in the Case, who has got Bail, and claims a Preference on that Account, and will not take 19s. 6d. in the Pound, when perhaps there is not 10s. for the Rest; they think him unreasonable, and will not comply; the Accommodation breaks off, and the poor Debtor dares not satisfy him, if the Money is ready in his Pocket. The Plaintiff sues to execution; the Debtor's whole Connection will not suffer a Commission of Bankrupt; he cannot go to a Gaol with an empty Pocket, for fear of starving; so in he goes with all the Residue of his Estate, upon which he is to live till Death, or the Legislature, out of their Compassion, relieves his Person. No honest Heart, mixed with Mercy, will deny, this poor Debtor is a very proper Object of Legislative Compassion; and if the Creditors are injured, it cannot reasonably be charged on him or the Legislature.

2dly. When a Merchant or Tradesman, in more extensive Concerns, by some Means or other finds himself failing in the World, an amicable Accommodation is always the first Attempt, and the most desirable for the unhappy Debtor; and if offered by an honest Man, is, beyond all Contradiction, the most beneficial to the Creditors, as recovered at the smallest Expence to the Estate; this is generally done by compounding for so much in the Pound as his Estate will reasonably bear, making Allowances for the
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Risque of Debts owing to the Estate, that may grow bad, or perish, to be paid at certain Periods, as can be agreed upon, and giving Security for those Payments; or else by assigning over his Estate and Effects to one or more of his Creditors, for the Benefit of the Whole, in Consideration of a general Release.—These Methods often miscarry, let the Debtor be never so honest; and for the most Part owing to the Obstinacy of some troublesome Creditor or Creditors, who, though on an Equality with all the rest, without any other Reason than their own turbulent Humours, will not come into such Accommodation; the Rest agree to make the poor Debtor a Bankrupt; and what between the fruitless Attempts of Accommodation, the necessary unavoidable Expence of the Commission, and the Havock made in the Debtor's Goods by the Expences of a Sale, the Goods sold at 25 or 30 per Cent. less than they cost, the Debts perishing by the Inattention of Assignees, charged with too much Business of their own to attend to the Interest of the unfortunate Man's Estate: Besides, the Sweets of holding the Stakes, is enough of itself to prolong the Dividend; so that an Estate on which the Debtor could very well have afforded to have given Security for the Payment of 15s. in the Pound, by reasonable Installments, and been a Gainer by the Bargain for his Trouble, shall not now produce 7s. or 8s. and that not paid in less than three or four Years; and in smaller and worse Estates, the Subject is reduced to nothing at all, or a Shilling or two in the Pound at most: The Blame seldom fails being laid to the Bankrupt's Door, and forsooth, because under this Management, and probably after rejecting a very reasonable Composition, offered by the Debtor before he became Bankrupt; the Assignees tell the Creditors they don't expect Matters will be half what they were offered; then the poor Debtor goes to Rack; few or none of the Creditors will sign his Certificate; others, more rigid, won't prove their Debts before the Sitting of the Commissioners, for making the first Dividend; and finding Affairs in this Situation, immediately conclude, he has, beyond all Doubt, secreted his Effects; and from this Persuasion, or from some other Motive equally unreasonable, shall throw this poor Devil into a Goal; there he must end his Days; for the Parliament has never considered him as an Object of their Compassion; nay, indeed, have always expressly excepted against him in every Insolvent Act; although there seems not in all the Prisons of England a more proper Object of Mercy.

3dly. It is simply impossible to conceive, under the present Severity of the Laws against Debtors, that any Man, be the Nature of his Debt what it will (excepting a Bankrupt already in Execution, or that may be sued to Execution before his final Examination, and obliged to surrender his Estate and Effects on Pain of Death) can reconcile himself to go into a Gaol, and cry at the Door, or at the Iron Grates of the Prison, for a Morfel of Bread, to prevent his famishing of Hunger, and not carry in with him what Money or Effects he has left, when he can find no other Remedy to keep his Bail harmless, than surrendering his Person in Discharge of them. The Argument bears double Weight when the Debtor is charged with a Family, whose Support depends entirely on his Industry: There he must remain; there is no Release for his Person, unless he is discharged by an Act of Parliament; and then the Mercy of the Legislature is challenged for giving away the Property of his Majesty's Subjects: For God's sake, what Property? The Person of a Man in Rags, whose Body can never be of half the Value of the Carcase of a Sheep to his Creditors; and in all these Cases the Parliament has ever shewn the strictest Attention to Justice, mixt with Mercy, by ordaining the poor Debtor to divest himself of every Thing he has left, without his Eyes, real or personal, which he is possessed of in Remainder, Reversion, or Expectancy. Where is the Hardship on the Subjects, who might have had all the Debtor was possessed of before he went to a Gaol? Could the Debtor give more to redeem even his Soul from Death? The Hardship then seems to be this, that the Debtor would not give his All to his Creditors, and then

then go stript into a Gaol, and be starved to Death in Satisfaction for the Deficiency he was not able to pay.

Most of our neighbouring Kingdoms and States seem to have adverted to the Necessity of moderating this Severity, particularly the Dutch, who have long been our Rivals in Trade and Commerce, and where good Faith and Credit amongst the Subjects, seems to be so much the more essential, as the very Being of their Commonwealth is Trade.— Each Province has its own Ordonnanties; in Rotterdam, for Example, they have the *Desolate Kamer*; this is a Chamber to which any Insolvent may address himself, and deliver up his Estate and Effects (in Dutch, termed *Bordit*) upon Oath; the Commissioners appointed for that Purpose (who are generally the *Scheepens*, a Kind of Common Council-men) take upon themselves the Office of Arbitrators, and have a right to inspect the Insolvents' Books, and very rarely but they find him regular and exact in his Accounts, though he be ever so retrograde in his Circumstances; if they find the Insolvent an honest Man, they clear his Person from Arrest by Certificate, and recommend Humanity and Lenity to the Creditors; and very frequently the Creditors themselves assist him (by the above Recommendation) with the Loan of Money, to re-establish him in Business and Credit, and this they term *Rehabiliteeren*. The good Effects of this noble Method of Acting, is very sensibly felt by Creditors; it acts very forcibly upon the Minds of honest Debtors; and it is notorious in Holland, that many, under these Circumstances, have lived to pay their Creditors Principal and Interest, and have become afterwards Men of great Wealth; and whose Integrity and Honour in Commerce, having been thus tried, have been elected into the Offices of their Legislation, in which they have lived and died an Ornament and Example to Mankind.

The Scotch (when a distinct Kingdom) in their less commercial State, thought their Insolvents worthy of the Compassion of their Government, and provided their Act of *Cessio Bonorum*, by Petition of the Debtors to the Courts of Justice; and public Intimation given to the Creditors, to receive their Estate and Effects, or give in their Objections why the Debtor should not be released from his Imprisonment.

It cannot be apprehended either have found the bad Effects of these Laws, as they still stand unrepealed; and the Parliament of Great Britain seemed to have an Eye to this Moderation, by an Act passed in the 32d Year of George the Second, entitled, “ An Act for Relief of Debtors, with Respect to the Imprisonment of their Persons, and to oblige Debtors, who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the said Act, to make Discovery of, and deliver up on Oath their Estates for their Creditors Benefit.” In this Act the Sum is limited to 100l. Damages and Costs; and no Person who is charged in Execution for any Thing exceeding that Sum, can be relieved: It would be therefore not an improper Consideration, whether the Extension of this Act, without Limitation of Sums, would not be productive of more general Good than Evil to Great Britain? as thereby the Creditors would see their own Loss in accumulating expensive Law Suits against Debtors; and Debtors in Assurance of their Liberty, would be encouraged to make a chearful and fair Discovery of their Effects to their Creditors.

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